

103^D CONGRESS
1ST SESSION

H. R. 1445

To provide for the trilateral negotiation of North American environmental, labor, and agricultural standards, to implement as United States negotiating objectives in the North American free trade area negotiations certain threshold protections regarding worker rights, agricultural standards, and environmental quality, and to implement a corresponding, comprehensive trinational dispute resolution mechanism to investigate, adjudicate, and render binding, enforceable judgments against any unfair trade practices arising within the North American free trade area, including those involving the systematic denial or practical negation of certain threshold protections of worker rights, agricultural standards, and environmental quality.

IN THE HOUSE OF REPRESENTATIVES

MARCH 24, 1993

Mr. BROWN of California (for himself, Mr. GLICKMAN, Mr. WALSH, Ms. WOOLSEY, Mr. SPRATT, Mr. KANJORSKI, Mr. MCCLOSKEY, Mr. BLACKWELL, and Mr. LAFALCE) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To provide for the trilateral negotiation of North American environmental, labor, and agricultural standards, to implement as United States negotiating objectives in the North American free trade area negotiations certain threshold protections regarding worker rights, agricultural standards, and environmental quality, and to implement a corresponding, comprehensive trinational dispute resolution mechanism to investigate, adjudicate, and render binding, enforceable judgments against any unfair

1 efits of such trade as widely as possible, to protect-
2 ing citizens interests, and to enhancing respect for
3 human rights throughout North America, the prin-
4 cipal negotiating objectives of the United States with
5 respect to worker rights and standards, and the pro-
6 tection thereof, in the conduct of international trade,
7 commerce, and finance are—

8 (A) to ensure freedom of association and
9 to affirm the vital role that free and independ-
10 ent unions play in democratic governance;

11 (B) to ensure the rights of working people
12 to organize, to bargain collectively, and to
13 strike, and to ensure the right of workers' rep-
14 resentatives to legal protection in the free exer-
15 cise of their duties and fundamental human
16 rights;

17 (C) to establish a minimum age for the
18 employment of children—

19 (i) at 14 years if the employment will
20 not result in the neglect of their education
21 and will not harm their health and well-
22 being, and

23 (ii) at 18 years if the employment in-
24 volves the use of, or exposure to, hazard-
25 ous equipment or toxic chemical sub-

1 stances, but only if the use or exposure will
2 not pose long-term risks to their health
3 and safety;

4 (D) to ensure the right to health at the
5 workplace and to a healthy working environ-
6 ment, including freedom from exposure to toxic
7 substances;

8 (E) to guarantee the right of all workers to
9 equal protection, including freedom from dis-
10 crimination in wages or working conditions, re-
11 gardless of their nationality, race, religion, age,
12 or sex; and

13 (F) to guarantee humane standards of
14 wages and hours of work that take into account
15 different levels of national economic develop-
16 ment, but provide for improvement concurrently
17 with gains in productivity.

18 (2) ENVIRONMENTAL QUALITY AND PROTEC-
19 TION.—In recognition of the shared responsibility of
20 Canada, Mexico, and the United States as stewards
21 responsible for, and our common interest in, preserv-
22 ing and sustaining the North American continent's
23 natural habitat and resources over time, the prin-
24 cipal negotiating objectives of the United States with

1 respect to environmental quality and protection
2 are—

3 (A) the protection of environmental quality
4 and of the integrity of ecosystems, as well as
5 the maintenance of scarce biological and phys-
6 ical resources, in the conduct of international
7 trade, commerce, and finance;

8 (B) the establishment of a process for the
9 full and public disclosure of the kinds, quan-
10 tities, and risks associated with toxic chemical
11 and hazardous substance discharges into the
12 air, water, and land;

13 (C) the prevention of the export of toxic
14 and hazardous substances and products, such
15 as carcinogens and unsafe drugs, that are
16 banned in the country of origin;

17 (D) the prevention of the export of prod-
18 ucts (unless remediation or repatriation con-
19 tracts already exist) manufactured, extracted,
20 harvested, or grown under environmental condi-
21 tions or workplace safety and health conditions
22 that undermine counterpart standards, particu-
23 larly those applicable to the counterpart indus-
24 try in the importing country or the counterpart

1 standards, in general, in the importing country;
2 and

3 (E) to require that industries within their
4 national borders reduce the amount and toxicity
5 of hazardous substances that they use, mini-
6 mize the amount and toxicity of wastes they
7 generate, and demonstrate publicly their use of
8 best available technology for pollution abate-
9 ment in their production processes.

10 (3) UNFAIR TRADE PRACTICES.—In acknowl-
11 edging different, evolving comparative advantages
12 among trading nations, but with a view to distin-
13 guishing between acceptable and unacceptable means
14 of competition among trading nations, the principal
15 negotiating objectives of the United States with re-
16 spect to unfair trade practices shall include the
17 adoption, as a principle, that the systematic denial
18 or practical negation of the protections accorded
19 worker rights and standards and environmental
20 quality (within the context of paragraphs (1) and
21 (2)) as a means for any country or its industries to
22 gain competitive advantage in international trade,
23 commerce, and finance is an actionable unfair trade
24 practice.

1 (4) COMPREHENSIVE DISPUTE RESOLUTION.—

2 The principal negotiating objectives of the United
3 States are to achieve a process for the settlement of
4 disputes that arise between or among the signatories
5 with respect to unfair trade practices, including not
6 only those involving commonly identified unfair
7 trade barriers, but unfair practices, within the con-
8 text of the negotiating objectives listed in para-
9 graphs (1), (2), and (3) involving the systematic de-
10 nial or practical negation of worker rights and
11 standards and failure to apply or enforce standards
12 relating to environmental quality or protection, re-
13 sulting in distortions to international trade, com-
14 merce, and finance. Such a process shall include—

15 (A) notification by each signatory nation to
16 the other signatories regarding changes in law
17 or practice that will materially affect the agree-
18 ment;

19 (B) provision, on a sequential basis and
20 subject to reasonable time limits, for consulta-
21 tion between or among signatories, for medi-
22 ation, and, if necessary, for binding arbitration;

23 (C) the establishment of a trinational com-
24 mission, with authority to investigate, adju-
25 dicate, and issue binding judgments in a timely

1 manner regarding the issues in dispute pursu-
2 ant to subparagraph (B)—

3 (i) that consists of equal numbers of
4 experts from the signatory nations (with
5 United States experts being subject to the
6 advice and consent of the United States
7 Senate), and

8 (ii) the chairmanship of which will be
9 filled by individuals who—

10 (I) are citizens of the respective
11 signatories,

12 (II) serve on a rotational basis
13 among the signatories for 2-year
14 terms, but no individual may serve in
15 such office for more than one term,
16 and

17 (III) are appointed to such office
18 by the respective chief executive offi-
19 cers of the signatories (and any chair-
20 person appointed from the United
21 States is subject to the advice and
22 consent of the United States Senate);
23 and

24 (D) provision for the trinational commis-
25 sion, in its proceedings and deliberations, to

1 consult with a wide array of representative or-
2 ganizations, in addition to government agencies,
3 with expertise in labor, environmental, agricul-
4 tural, and scientific matters in each of the sig-
5 natory nations;

6 (E) provision for the trinational commis-
7 sion to enforce its judgments, as appropriate,
8 by authorizing an aggrieved signatory nation
9 to—

10 (i) suspend, withdraw, or prevent the
11 application of, the benefits of trade agree-
12 ment concessions to carry out the NAFTA
13 with the offending signatory nation,

14 (ii) impose proportionate duties on
15 specific products, companies, or industries,
16 or other offsetting import restrictions on
17 the goods of, and offsetting fees or restric-
18 tions on the services of, the offending sig-
19 natory nation for such time as the
20 trinational commission determines, or

21 (iii) enter into binding agreements
22 with the offending signatory nation that
23 commit such nation to—

24 (I) eliminate, or phase out, the
25 act, policy, or practice that constitutes

1 an unfair trade practice and that is
2 the subject of the action to be taken
3 under clause (i) or (ii),

4 (II) eliminate any burden or re-
5 striction on North American trade, as
6 defined in the NAFTA, resulting from
7 such unfair trade practice,

8 (III) provide the aggrieved signa-
9 tory nation with compensatory trade
10 benefits that are satisfactory to the
11 trilateral commission and meet the
12 requirements of subparagraph (F), or

13 (IV) enter into debt-for-science
14 exchanges, or similar arrangements,
15 as appropriate, that are satisfactory
16 to the trilateral commission and that
17 serve, as potential funding sources for
18 remedies recommended under para-
19 graph (5), to ameliorate the issues in
20 dispute pursuant to subparagraph
21 (B);

22 (F) provision that any binding agreement
23 described in subparagraph (E)(iii)(III) provide
24 compensatory trade benefits (including, but not
25 limited to, appropriate fees on trans-border

1 movements of products, services, or capital)
2 that benefit the economic sector which includes
3 the domestic industry in the aggrieved signatory
4 nation that would benefit from the elimination
5 of the act, policy, or practice that constitutes an
6 unfair trade practice and that is the subject of
7 the action to be taken under subparagraph (E),
8 or benefit the economic sector within the ag-
9 grieved signatory nation as closely related as
10 possible to such sector, unless—

11 (i) the provision of such trade benefits
12 is not feasible, or

13 (ii) trade benefits that benefit any
14 other economic sector within the aggrieved
15 signatory nation would be clearly and sub-
16 stantially more satisfactory than such
17 trade benefits;

18 (G) provision for the trinational commis-
19 sion, in taking action against unfair trade prac-
20 tices, as defined in the NAFTA, to avoid dimin-
21 ishing higher protections accorded worker rights
22 and standards and environmental quality and
23 protection and to give preference to the prompt
24 elimination of the act, policy, or practice at
25 issue over—

1 (i) the imposition of duties or other
2 offsetting import restrictions or compen-
3 satory trade benefits, or

4 (ii) the entering into of debt relief ar-
5 rangements described in subparagraph
6 (E)(iii)(IV);

7 (H) provision for the government of any
8 signatory nation or any informed person within
9 a signatory nation to file a petition requesting
10 the trilateral commission to take action under
11 subparagraph (E) against any unfair trade
12 practice, including the systematic denial or
13 practical negation of worker rights and stand-
14 ards and failure to apply or enforce standards
15 relating to environmental quality or protection
16 (referred to in paragraphs (1) and (2)), and
17 setting forth the allegations in support of the
18 request in public hearings and written testi-
19 mony; and

20 (I) provision for the proceedings, record,
21 and decisions (along with the supporting ration-
22 ale) of the trilateral commission to be made
23 public information.

24 (5) TECHNICAL ADVICE AND RECOMMENDA-
25 TIONS.—

1 (A) INTERAGENCY COMMITTEE.—The Di-
2 rector of the Office of Science and Technology
3 shall establish, through the Federal Coordinat-
4 ing Council on Science, Engineering, and Tech-
5 nology, an interagency committee to provide
6 technical assistance, advice, and recommenda-
7 tions to United States experts on the trinational
8 commission. The interagency committee shall
9 include one representative from each of the fol-
10 lowing agencies:

11 (i) The National Science Foundation.

12 (ii) The Environmental Protection
13 Agency.

14 (iii) The Department of Labor.

15 (iv) The Department of the Interior.

16 (v) The Department of Agriculture.

17 (vi) The Department of Energy.

18 (vii) The National Institute of Stand-
19 ards and Technology.

20 (viii) The Department of Justice.

21 (B) SPECIFIC FUNCTIONS.—In addition to
22 the general functions referred to in subpara-
23 graph (A), the interagency committee shall
24 evaluate the scientific and technological aspects
25 of certain disputes brought before the

1 trinational commission that pertain to environ-
2 mental quality and protection and to workplace
3 safety and health, and shall determine if viola-
4 tions related to the disputes reflect—

5 (i) inadequate or insufficient applica-
6 tion of known technologies and techniques
7 for mitigation of the violations, or

8 (ii) need for additional research on,
9 and the development of, new technologies
10 and techniques for mitigation of the viola-
11 tions.

12 Consistent with paragraph (4)(G), and after
13 consultations with State and local government
14 officials and a wide array of representative or-
15 ganizations with expertise in environmental,
16 labor, agricultural and scientific matters, the
17 interagency committee will recommend to the
18 United States experts on the trinational com-
19 mission, when appropriate, specific techno-
20 logical remedies to eliminate violations or fur-
21 ther research that is needed to develop scientific
22 and technological remedies.

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